

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MICHAEL D. ROSE,
and EDWARD L. HARMON,
*on their own behalf and on behalf
of all others similarly situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 5:22-cv-00405

MICHAEL FRANCIS,
*individually and as an employee of
the West Virginia Division of Corrections
and Rehabilitation,*
THE RALEIGH COUNTY COMMISSION,
John/Jane Doe Employees of the Raleigh
County Commission,
THE FAYETTE COUNTY COMMISSION,
John/Jane Doe Employees of the Fayette
County Commission,
THE GREENBRIER COUNTY COMMISSION,
John/Jane Doe Employees of the Greenbrier
County Commission,
THE MERCER COUNTY COMMISSION,
John/Jane Doe Employees of the Mercer
County Commission,
THE MONROE COUNTY COMMISSION,
John/Jane Doe Employees of the Monroe
County Commission,
THE SUMMERS COUNTY COMMISSION,
John/Jane Doe Employees of the Summers
County Commission,
THE WYOMING COUNTY COMMISSION,
John/Jane Doe Employees of the Wyoming
County Commission,
PRIMECARE MEDICAL OF WEST VIRGINIA, INC.,
John/Jane Doe PrimeCare Employees,
JOHN/JANE DOE CORRECTIONAL OFFICERS,
BETSY JIVIDEN, *individually as an employee of the
West Virginia Division of Corrections and Rehabilitation,*
WEXFORD HEALTH SOURCES, INC.
John/Jane Doe Wexford Employees,

BRAD DOUGLAS, *individually and in his official capacity as the acting Commissioner of the West Virginia Division of Corrections and Rehabilitation,* JEFF S. SANDY, *individually and in his official capacity as the Cabinet Secretary of the West Virginia Division Department of Homeland Security, and* WILLIAM K. MARSHALL, III *individually and in his official capacity as the Commissioner of the West Virginia Division of Corrections and Rehabilitation,*

Defendants.

ORDER

Pending are Plaintiffs' Motion for Partial Summary Judgment [Doc. 903], filed March 7, 2024, and Plaintiffs' and Defendants Jeff S. Sandy, William K. Marshall III, Betsy Jividen, Brad Douglas, and Michael Francis's (hereinafter "the Settling Defendants") Joint Motion to Deny as Moot Plaintiffs' Motion for Partial Summary Judgment [Doc. 909], filed March 13, 2024.

At a hearing on November 9, 2023, the parties noted a pending settlement respecting the Settling Defendants. Thereafter, on November 15, 2023, the Court entered a scheduling order setting dates and deadlines relevant to the pending settlement. [Doc. 821]. The Court also denied as moot and without prejudice motions then pending between Plaintiffs and Settling Defendants. [*Id.* at 3]. The Court further determined that to the extent approval of the pending settlement is withheld, new deadlines will be set for motion practice as necessary. [*Id.*]. The Court has not yet ruled on the pending settlement. Accordingly, the Court **GRANTS** the Joint Motion [Doc. 909] and **DENIES AS MOOT AND WITHOUT PREJUDICE** Plaintiffs' Motion for Partial Summary Judgment [Doc. 903].

The Clerk is **DIRECTED** to transmit a copy of this written opinion and order to all counsel of record and to any unrepresented party.

ENTER: April 5, 2024




Frank W. Volk
United States District Judge